

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Appeal No. 15834 of the Sixteenth Street Heights Civic Association, pursuant to 11 DCMR 3105.1 and 3200.2, from a decision of Joseph F. Bottner, Zoning Administrator, made on April 13, and 14, 1993, to the effect that Permit Nos. B379833 and B37984 were issued in violation of the Zoning Regulations in that the more stringent requirements of the proposed Sixteenth Street Heights (SSH) Overlay District (Z.C. Case No. 92-2) were not utilized with respect to occupancy capacity, handicapped parking and public space use for a church in an SSH/R-2 District at premises 1400 Nicholson Street, N.W. (Square 2733, Lot 44).

HEARING DATE: July 28, October 13, and December 22, 1993,  
March 16, and May 11, 1994

DECISION DATE: May 11, 1994 (Bench Decision)

DISMISSAL ORDER

The application was originally scheduled for the public hearing of July 28, 1993. By letter dated June 28, 1993, and by representative at the public hearing, the appellant requested postponement of the hearing on the case due to a scheduling conflict for two of the appellant's witnesses. The Board continued the case to its scheduled public hearing of October 13, 1993.

The public hearing of October 13, 1993 was cancelled by the Board. The appeal was rescheduled to the Board's public hearing of December 22, 1993.

By letter dated November 22, 1993, and by representative at the public hearing, counsel for the property owner requested postponement of the hearing on the case due to scheduling conflicts for himself and several of the property owner's witnesses. By letter dated December 13, 1993, Advisory Neighborhood Commission (ANC) 4A supported the request for continuance. The Board continued the case to its public hearing of March 16, 1994.

On the public hearing date of March 16, 1994, the Zoning Administrator was unavailable to present testimony in support of his decision. The Board continued the appeal to its public hearing of May 11, 1994.

As a preliminary matter, at the public hearing of May 11, 1994, staff advised the Board that the property involved in the subject appeal was not included within the Sixteenth Street Heights Overlay District (SSHOD) as set forth in the Proposed Rulemaking in Zoning Commission Case No. 92-2, published in the D.C. Register on

February 4, 1994. The proposed rulemaking applies the SSHOD to all properties zoned R-1-B within the boundaries of the proposed overlay district. Although the square containing the subject property is included within the boundaries of the proposed overlay district, the subject site would be excluded because it is currently zoned R-2.

The appellant's representative noted, pursuant to 11 DCMR 3202.6, that because the application for building permit at the subject premises was filed after the decision of the Zoning Commission to hold a public hearing on the map amendment, the permit must be issued in compliance with the zone district ultimately approved by the Zoning Commission or with the most restrictive zone district being considered for the site. The appellant's representative argued that the Notice of Public Hearing in Zoning Commission Case No. 92-2 included both the R-1-B and R-2 zoned properties within the overlay boundaries and, therefore, the Zoning Administrator should have applied the SSHOD requirements to the subject site. The Chairperson noted that the original notice of public hearing in Zoning Commission Case No. 92-2 was superseded by the subsequent notice of proposed rulemaking, thereby excluding the subject site.

The appellant's representative requested permission to withdraw its arguments with respect to the overlay district and to proceed with its arguments relative to the calculation of required parking spaces based on the occupancy capacity of the church and whether the parking area complies with all applicable codes and regulations.

The representative of the owner of the subject property objected to proceeding with the case based on the following:

- a. The issues relative to the formula for calculating the required parking and the compliance of the parking area with applicable code requirements have previously been addressed by the Board.
- b. The permits at issue in this appeal amend prior approved permits and, therefore, would be permitted pursuant to Section 3202.4(b) of the proposed SSHOD if the provisions of the overlay district were determined to apply to the subject site.

Staff noted that the issue involved in the subject appeal, as contained in the appellant's original filing and the notice of public hearing in this case, relates specifically to whether the more stringent requirements of the SSHOD were applied with respect to the issuance of permits, occupancy capacity, handicapped parking and public space use by a church in the SSH/R-2 District. Staff

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noted that withdrawal of the issue relative to the overlay district would eliminate consideration of the appeal by the Board as advertised for hearing.


Based on the foregoing, the Board concludes that the appeal is not properly before it at the present time. It is hereby **ORDERED** that the appeal, as filed, is **DISMISSED**. The Board notes that the appellant may file a new appeal if circumstances relative to the zoning of the site so warrant in the future. With respect to the appellant's issues relative to occupancy capacity and parking compliance, the Board finds that it has adequately addressed those concerns in Appeal No. 14402, dated August 29, 1986, and Appeal No. 15618, dated August 7, 1992.

The Board notes that the appellant has the right to require the enforcement of all applicable code and licensing requirements relative to the subject property. Failure of the property owner to comply with the applicable code and licensing requirements is subject to the issuance of citations under the Civil Infractions Act and other enforcement measures by appropriate agencies:

VOTE: 3-1 (Craig Ellis, John G. Parsons and George Evans to dismiss; Laura M. Richards opposed to the motion; Angel F. Clarens not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
MADELIENE H. ROBINSON  
Director

JUN 17 1994

FINAL DATE OF ORDER: \_\_\_\_\_

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

15834Order/SS/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



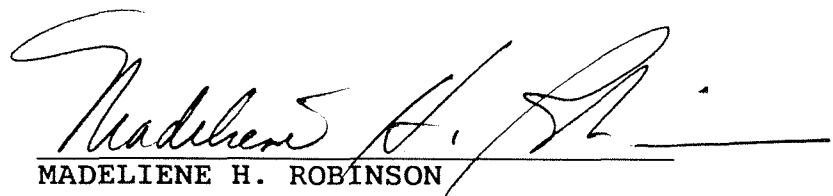
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As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on JUN 17 1994 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Jacqueline V. Helm, President  
16th Street Heights Civic Association  
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James Lehman  
Davis, Polk & Wardell  
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7600 Georgia Avenue, N.W., #205  
Washington, D.C. 20012

  
MADELIENE H. ROBINSON  
Director

DATE: JUN 17 1994

15834Att/bhs